

ATTACHMENT 2

BEFORE THE
FEDERAL COMMUNICATIONS COMMISSION
WASHINGTON, D.C. 20554

In the Matter of)
)
Qwest Petition for Forbearance Under)
47 U.S.C. § 160(c) from Title II and)
Computer Inquiry Rules with Respect)
To Broadband Services)
)
Petition of AT&T Inc. for Forbearance)
Under 47 U.S.C. § 160(c) from Title II)
And *Computer Inquiry* with Respect to its)
Broadband Services)
)
Petition of BellSouth Corporation for)
Forbearance Under 47 U.S.C. § 160(c))
From Title II and *Computer Inquiry* Rules)
With Respect to its Broadband Services)
)
Petition of the Embarq Local Operating)
Companies for Forbearance Under)
47 U.S.C. § 160(c) from Application of)
Computer Inquiry and Certain Title II)
Common-Carriage Requirements)
)
Petition of the Verizon Telephone Companies)
for Forbearance Under 47 U.S.C. § 160(c))
from Title II and *Computer Inquiry* Rules)
with Respect to Their Broadband Services)
)

CHRON

WC Docket No. 06-125

WC Docket No. 06-147

WC Docket No. 04-440

**REPLY COMMENTS OF BROADVIEW NETWORKS, COVAD
COMMUNICATIONS, CTC COMMUNICATIONS, INC., ESCHOLON TELECOM,
INC., NUVOX COMMUNICATIONS, XO COMMUNICATIONS, XSPEDIUS
MANAGEMENT COMPANY LLC, AND YIPES ENTERPRISE SERVICES, INC.**

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REPLY COMMENTS

Pursuant to the Public Notices issued by the Federal Communications

Commission ("Commission") in the above-captioned proceedings,¹ Broadview Networks, Covad

¹ *Pleading Cycle Established for Comments on Qwest and AT&T Petitions for Forbearance Under 47 U.S.C. § 160(c) from Title II and Computer Inquiry Rules with Respect to Broadband Services*, WC Docket No. 06-125, Public Notice, DA 06-1464 (rel. July 19, 2006), modified, *Qwest Petition for Forbearance Under 47 U.S.C. § 160(c) from Title II and Computer Inquiry Rules with Respect to Broadband Services*, WC Docket No. 06-125, Order, DA 06-1544 (rel. July 28, 2006). *Pleading Cycle Established for Comments on Embarq Local Operating Companies'*

Continued...

Communications, CTC Communications, Inc., Eschelon Telecom, Inc., NuVox Communications, XO Communications, Inc., Xspedius Management Company LLC , and Yipes Enterprise Services, Inc. (“Yipes”) (collectively, the “Joint Commenters”), through their attorneys, hereby reply to the initial comments filed on the forbearance petitions of AT&T Inc. (“AT&T”), BellSouth Corporation (“BellSouth”), the Embarq Local Operating Companies (“Embarq”), and Qwest Communications (“Qwest”) (collectively, the “ILEC Petitioners”).²

I. INTRODUCTION AND SUMMARY

The initial comments filed in this proceeding revealed the weak underside of the ILEC Petitioners’ requests for relief. Generally, the comments opposed the requests for forbearance. In addition to the concentrated opposition of CLECs provided by the Joint Commenters,³ other groups of CLECs, and a competitive trade association,⁴ there was opposition

Petition for Forbearance under 47 U.S.C. § 160(c) from Application of Computer Inquiry and Certain Title II Common Carriage Requirements, WC Docket No. 06-147, Public Notice, DA 06-1545 (rel. July 28, 2006).

² *Qwest Petition for Forbearance Under 47 U.S.C. § 160(c) from Title II and Computer Inquiry Rules with Respect to Broadband Services* (filed June 13, 2006); *Petition of AT&T for Forbearance Under 47 U.S.C. § 160(c) from Title II and Computer Inquiry Rules with Respect to its Broadband Services* (filed Jul. 13, 2006); *Petition of BellSouth Corporation for Forbearance Under 47 U.S.C. § 160(c) from Title II and the Computer Inquiry Rules with Respect to its Broadband Services* (filed Jul. 20, 2006). *Petition of the Embarq Local Operating Companies for Forbearance Under 47 U.S.C. § 160(c) from Application of Computer Inquiry and Certain Title II Common Carriage Requirements* (filed Jul. 26, 2006), WC Docket No. 06-125 (consolidated) (collectively, the “ILEC Petitions”).

³ Yipes did not participate in the initial comments filed by the other Joint Commenters but endorses them through its participation in these reply comments.

⁴ Comments of Alpheus Communications, LP, *et al.*; Comments of Comptel; Comments of Sprint Nextel; Comments of Time Warner, *et al.* Where not specified otherwise, all citations to comments herein refer to initial comments filed in WC Docket No. 06-125 on August 17, 2006, or (in the case of ACS of Anchorage, Inc.) on August 16, 2006.

by rural incumbent local exchange carriers (“rural ILECs”),⁵ a major broadband Internet access provider,⁶ and a major citizen’s advocacy group.⁷ The only support came from two ILECs that have their own petitions for forbearance pending⁸ and two other ILECs that seek to ride the coat-tails of the ILEC Petitioners to receive forbearance for themselves.⁹ As discussed herein, the four ILECs filing comments do not offer any additional evidence supporting a grant of forbearance, whether for themselves or for the ILEC Petitioners.

By contrast, the commenters in opposition made clear that the ILEC Petitioners and Verizon control the facilities needed to give retail broadband competition the chance to grow and develop. Title II regulation (and *Computer II* requirements) remain necessary to ensure that the rates for these wholesale inputs, as well as for retail services, will be available on just, reasonable, and nondiscriminatory rates, terms, and conditions. Further, the opponents of the ILEC Petitions, like the Joint Commenters, demonstrated that the ILEC Petitioners are already able to respond to any competition they experience. If the Commission is inclined to provide

⁵ Comments of the National Telecommunications Cooperative Association (“NTCA”). The Organization for the Promotion and Advancement of Small Telecommunications Companies (“OPASTCO”), another trade association of rural ILECs, filed comments. OPASTCO did not openly oppose or support the ILEC Petitions, but it did argue for the need of the Commission to state very precisely the scope of any relief granted and to consider carefully the impact of the requested deregulation on rural ILECs, noting that “it is essential that rural ILECs have access to the Internet backbone at just, reasonable, and nondiscriminatory rates and terms in order to provide their customers with high-quality, affordable advanced services.” Comments of OPASTCO at 6. Notably, to date, the enforcement of the Title II provisions for which forbearance is now sought has been the principal way the Commission has assured such access.

⁶ Comments Earthlink, Inc., and New Edge Networks, Inc. (“Earthlink”)

⁷ Comments of the New Jersey Division of Rate Counsel.

⁸ Comments of ACS of Anchorage, Inc. (“ACS”); Comments of the Embarq Local Operating Companies (“Embarq”).

⁹ Comments of Cincinnati Bell; Comments of Iowa Telecom. Iowa Telecom is the second largest ILEC in the state of Iowa after Qwest. <http://www.iowatelecom.com/aboutiowatelecom/article.asp?id=127> (“With approximately 257,700 access lines in service, we are the second largest telephone company in Iowa. We operate 290 telephone exchanges.”)

any forbearance relief at all, it should streamline the tariffing process for ILECs in a rulemaking, and make very clear the extent of the relief being granted, including the services to which the relief applies. Simultaneously with rejecting the ILEC Petitions, the Commission should address and deny the Verizon Petition.¹⁰

II. THERE IS CONSENSUS THAT THE ILEC PETITIONERS AND VERIZON CONTROL THE FACILITIES NEEDED TO SUPPORT ANY MEASURE OF RETAIL COMPETITION IN BROADBAND SERVICE MARKETS

In their initial comments, the Joint Commenters made clear that the most far reaching consequence of the grant of the ILEC Petitions would be that the wholesale inputs upon which they rely to offer retail broadband services would no longer be subject to Title II regulation. This would undermine the potential benefits of competition, and end users consequently would suffer from the lack of assurance of just and reasonable rates, terms, and conditions that Title II regulation safeguards and not have the benefits of choice and innovative services that competition can provide. The absence of competitive alternatives to these ILEC-provided wholesale inputs would give the ILEC Petitioners the freedom to engage in anti-competitive conduct, including the liberty to refuse, without any recourse, to provide service to competitors – *and* end user customers – except at monopoly prices.

The initial comments bolster these demonstrations. The Commission previously has recognized that to determine dominance in retail markets, the relevant markets must be examined for wholesale inputs.¹¹ As several commenters pointed out, in the recent AT&T and

¹⁰ See *Petition of the Verizon Telephone Companies for Forbearance Under 47 U.S.C. § 160(c) from Title II and Computer Inquiry Rules with Respect to Their Broadband Services*, WC Docket No. 04-440 (filed Dec. 20, 2004) (“*Verizon Petition*”).

¹¹ *Review of Regulatory Requirements for Incumbent LEC broadband telecommunications Services*, NPRM, 16 FCC Rcd 22745 ¶¶ 17, 28 (2001). The Joint Commenters demonstrated in their initial comments that the ILEC Petitioners utterly failed to provide evidence of the relevant product and

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Verizon merger proceedings, the DOJ found that Verizon and SBC (AT&T) were the only carriers with access to the vast majority of buildings in their respective regions.¹² This dominance extends to OCn services which, no less than their DS1 and DS3 counterparts, rely on last mile access to the customers.¹³ There is no reason to believe otherwise for BellSouth, Qwest, or Embarq, especially in light of the Commission's findings in just the past few years that less than five percent of the nation's commercial office buildings are served by competitor-owned fiber loops – a number even lower now that the two largest CLECs were absorbed into the two largest ILECs less than a year ago.¹⁴ Indeed, Embarq notes in its comments that,

geographic markets. Comments of Joint Commenters at 20-28. *See also* Comments of Time Warner, *et al.* at 14.

¹² Comments of Alpheus *et al.* at 17; Comments of Time Warner *et al.* at 4, 11. These recent merger cases examined the ability of competition to make up for loss of the contemplated CLEC merger partner as a competitor. As such, what was of relevance to the Commission, as reflected in the merger conditions it adopted, were the buildings in which both of the merger partners – and only those two entities – had facilities. The overwhelming number of buildings in the SBC and Verizon territories in which only the ILEC had facilities were not of particular interest because the proposed relief in those cases, *i.e.*, approval of the mergers, would have no direct impact on the market conditions under which service is provided to those buildings. Here, however, the fact that the ILEC Petitioners and Verizon, in their respective territories, are the only carriers with access to the vast majority of buildings is of extreme relevance because the ILECs ask that the relevant retail and wholesale broadband services they will provide to those locations be removed from any and all regulatory oversight.

¹³ *See, e.g.*, Comments of Sprint at 9 (despite extensive efforts, Sprint still relies on ILECs 95% and 83 % of time for DS1 and DS3 circuits, respectively, and for OCn circuits in 75%-85% of cases).

¹⁴ At the time of the *Triennial Review Order*, the Commission found 3%-5 % of buildings were served by CLEC-owned fiber. *Review of the Section 251 Unbundling Obligations of Incumbent Local Exchange Carriers, Implementation of the Local Competition Provisions of the Telecommunications Act of 1996, Deployment of Wireline Services Offering Advanced Telecommunications Capability, Report and Order and Order on Remand and Further Notice of Proposed Rulemaking*, 18 FCC Rcd 16978, ¶ 298 n. 856 (2003) (“TRO”) *vacated and remanded in part, affirmed in part, United States Telecom Ass’n v. FCC*, 359 F.3d 554 (D.C. Cir. 2004) *cert. denied*, 125 S.Ct. 313, 316, 345 (2004). During the *Triennial Review Remand* proceedings, the Commission found that there were between 700,000 and 3 million commercial buildings in the nation. *Unbundled Access to Network Elements, Review of the Section 251 Unbundling Obligations of Incumbent Local Exchange Carriers, Order on Remand*, 20 FCC Rcd 253, ¶ 157 (2004) (“TRRO”), *aff’d sub nom. Covad Communications Co. v. FCC*, Nos. 05-1095 *et al.*, ___ F.3d ___ (D.C. Cir. 2006). The RBOCs’ “UNE Fact Report” filed in Docket 04-313 in October

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although the legacy AT&T and the legacy MCI compete nationally, they too, are dependent *outside their new ILEC territories* and apart from any legacy CLEC facilities on the other ILECs to gain access to customer locations to offer broadband services.¹⁵ CLECs are just as dependent upon ILEC facilities to provide broadband services as they are to provide TDM-based services.

In light of the obvious dominance of the ILECs within their own regions over broadband facilities and connections to business customers, if the relief requested is granted, there will be no assurances that competitors will continue to have access to these inputs at just and reasonable prices, if the ILEC Petitioners and Verizon choose to make these inputs available at all. There are no competitive alternatives to access these buildings in most cases, nor are new options likely to develop. AT&T's submissions and presentations to the Commission in the *Triennial Review* proceedings demonstrated that facilities-based entry or expansion of facilities by competitive LECs will not be timely, likely, or sufficient because the prohibitive costs of such entry or expansion.¹⁶ The Commission itself has recognized that competitors seeking to

2004 stated that fewer than 32,000 of the commercial buildings in the country were served with competitively provided fiber loops, or at most only about 4.6% of the lower, 700,00 number found in the *TRRO*. See BellSouth, Qwest, SBC, and Verizon: *UNE Fact Report 2004*, p. III-4, Table 1, attached to *ex parte* Letter from Evan Leo, Kellogg, Huber, Hansen, Todd & Evans, P.L.L.C., to Marlene Dortch, Secretary, FCC filed in CC Docket No. 01-338 and WC Docket No. 04-313 (dated October 4, 2004).

¹⁵ See Comments of Embarq at 4.

¹⁶ "AT&T Presentation to the FCC Comparing incumbent LEC and competitive LEC Network Architectures," October 3, 2002, filed in CC Docket 01-338; "Transport UNEs Are a Prerequisite for the Development of Facilities-Based Local Competition." AT&T Presentation, dated October 7, 2002, filed in CC Docket 01-338 on October 8, 2002; Letter from Joan Marsh, Director, Federal Government Affairs, AT&T, to Ms. Marlene Dortch, Secretary, Federal Communications Commission, November 25, 2002, filed in CC Dockets 01-338, 96-98 and 98-147; Reply Declaration of Anthony Fea on Behalf of AT&T Corp., October 18, 2004, filed in WC Docket 04-313 and CC Docket 01-338. It should be noted that MCI made similar filings in the *Triennial Review* proceedings. See, for instance, MCI's Comments and Reply Comments in WC Docket No. 04-313, October 4 and 19, 2004 respectively.

construct local transmission facilities face “steep economic barriers.”¹⁷ The costs for broadband loop and transport facilities are the same as for any other types of service, including TDM facilities. Intermodal competition is not the key, as so-called intermodal competitors, when providing broadband services to business customers rely upon the same wholesale inputs as “traditional” CLECs do. GCI’s comments, in the forbearance proceeding initiated by ACS of Anchorage, bear this out.¹⁸ GCI, a cable company and CLEC, notes that cable companies have not been able to penetrate the business markets with broadband services, except where they have access to ILEC inputs. Cable facilities do not adequately serve these purposes.¹⁹ Other parties have recently pointed out that enterprise-level broadband competition from wireless local loops has failed in the past, and the Commission should not give them credit for providing potential independent sources of competition where none is currently due.²⁰

Furthermore, the continued availability of TDM DS1 and DS3 facilities through ILEC-provided UNEs or tariffed special access services is not a palliative for the adverse consequences caused by the removal of most other broadband services from regulatory oversight. As an initial matter, the TDM services could not serve as inputs for OCn level broadband services, even under the best of circumstances.²¹ Even at the DS1 and DS3 level, the Commission’s own rules limit the uses to which DS1 and DS3 UNEs can be put, placing

¹⁷ *TRO*, ¶ 199.

¹⁸ Comments of General Communication, Inc., *et al.*, WC Docket No. 06-109 (filed August 11, 2006).

¹⁹ *Id.* at 12-15.

²⁰ *Id.* at 18; Comments of Time Warner *et al.*, WC Docket No. 06-109 (filed Aug. 11, 2006) at 18.

²¹ Indeed, because unbundling is no longer required for OCn level facilities and there is no TDM-equivalent at these levels of throughput, forbearance is even less justified for the higher bandwidth services.

restrictions on the ability of requesting carriers to employ these UNEs as flexibly as they may like to compete with the ILECs' broadband services.²² Moreover, there is little indication that CLECs have been able efficiently and effectively to provide packetized services using TDM-based loops. This is because of the need to purchase both TDM and Ethernet based equipment and because of the difficulty to convert TDM into and from Ethernet services.²³ Finally, and generally for the same reasons, TDM technology is essentially being left behind by the RBOCs and other large carriers as they move to SONET and other advanced packet-switched technologies, like dense wavelength division multiplexing.²⁴ So allowing, as the ILEC Petitioners request, that TDM-based services remain subject to Title II regulation and accepting only the obligation to provide to TDM-based DS1 and DS3 services and facilities to competitors as wholesale input is analogous, from the ILECs' perspective, to leaving *yesterday's* crumbs for the dogs.

III. THE INITIAL COMMENTS FURTHER DEMONSTRATE THAT THE SECTION 10 REQUISITES HAVE NOT BEEN MET BY ANY OF THE ILEC PETITIONERS

As the Joint Commenters made clear, the ILEC Petitions are utterly devoid of any concrete support that the prerequisites for forbearance relief set forth in section 10(a) of the Communications Act of 1934, as amended, have been satisfied.²⁵ To the contrary, the Joint Commenters demonstrated that there is insufficient competition to support a decision to refrain from enforcing Title II of the statute and the Commission's related regulations. Moreover, there

²² See, e.g., 47 C.F.R. § 51.318(b) (limits on DS1 and DS3 combinations and co-mingling).

²³ See Comments of Time Warner *et al.* at 15-16.

²⁴ See Comments of NTCA at 2.

²⁵ Comments of Joint Commenters at 22-35.

is no established need for relief from these regulations in order to allow the ILEC Petitioners to compete. The Comments of other interested parties reinforce these conclusions.²⁶

As some of the initial comments argue, the lack of competition will not be made up by the sophistication of large enterprise users to ensure consumers are not harmed.²⁷ The reality is that, if the ILECs do not have an incentive to bargain – namely the presence of a real competitor that does not rely on the inputs of the ILEC – then the sophistication of large enterprise users will not ensure just and reasonable prices if the large users do not have competitive choices. Indeed, the carriers attempting to compete with the ILECs are certainly as sophisticated as any large enterprise when it comes to purchasing telecommunications services. But that does not guarantee, in the absence of competitive alternatives, that the carrier can obtain just and reasonable rates, terms, and conditions. The ILEC Petitions are notably void of any detail regarding whom the supposed competitors are that obviate the need for continued Title II and *Computer Inquiry* regulation.²⁸

Indeed, reviewing the ILEC Petitions and the few initial comments supporting them, one is left with the distinct impression that, with the exception of the legacy AT&T and MCI operations, the RBOCs do not compete in each other's regions.²⁹ This further undermines any notion of a robustly competitive nationwide market on which the requests for forbearance depend. In fact, the comments of Cincinnati Bell, which merely cite to the same Commission

²⁶ E.g., Comments of Alpheus *et al.* at 14-26; Comments of Sprint Nextel at 11-24; Comments of Earthlink at 9-21; Comments of Time Warner *et al.* generally.

²⁷ E.g., Comments of Earthlink at 19; Comments of Time Warner *et al.* at 20-22.

²⁸ If the ILEC Petitioners in their reply comments try to fill in the evidentiary gaps left by their Petitions, the Commission should provide interested parties the opportunity for a rebuttal.

²⁹ See Comments of Alpheus *et al.* at 7.

orders declaiming the robustness of competition that are relied upon almost exclusively by the ILEC Petitions, highlights the lack of empirical evidence.³⁰ More specifically, Cincinnati Bell has a limited and well-defined operating territory, but it was unable to muster any data regarding actual competition in that territory, as it seeks (through the Embarq Petition's request for forbearance for all "similarly situated" carriers) forbearance relief for itself. Similarly, Iowa Telecom talks of the "*continued* viability of broadband competition in smaller cities and rural areas," including presumably the hundreds of exchanges it operates in, but gives no indication whatsoever of the source or identity of this alleged competition.³¹ Making the contrary case, both NTCA and OPASTCO emphasize the reliance of rural carriers upon the facilities of the ILECs to compete in the broadband markets with the ILECs and show deep concern about the potential of forbearance to deny smaller carriers of just and reasonable terms for necessary wholesale inputs³² if not outright advocacy for the denial of the ILEC Petitions.³³

An example of what is likely to happen if Title II oversight is removed – and why the section 10 criteria are not satisfied – has been provided recently by Verizon and BellSouth.

³⁰ For example, Cincinnati Bell extensively cites the Commission's findings of competitive conditions in the *TRO* and *TRRO*. Comments of Cincinnati Bell at 5-6. The Commission felt that there would be competition developing – that unbundling was not necessary to give CLECs access to certain network inputs. Time, however, has not proven the Commission correct in its anticipation of the growth of competitive wholesale alternatives. The Commission should not extrapolate its earlier, now unsatisfactory conclusions made in a different context to this situation several years later. Instead, the Commission must consider current data before even contemplating the grant of forbearance to the ILEC Petitioners or Verizon (or Cincinnati Bell or Iowa Telecom), something the ILEC Petitions are woefully short on. Moreover, Sprint notes that, just as a special access market analysis was not deemed appropriate by the Commission in its unbundling analysis, the *TRO* and *TRRO* should not be considered relevant in this forbearance context. Comments of Sprint at 18.

³¹ See Comments of Iowa Telecom at 2 (emphasis added).

³² Comments of OPASTCO at 6.

³³ Comments of NTCA at 2-3.

At the end of the 270-day period following the *Wireline Broadband Order* during which it was obligated to continue to contribute to the universal service fund based on its DSL end user revenues, Verizon announced that, while it would no longer assess a universal service recovery surcharge, it would commence the assessment of a new “supplier surcharge,” allegedly to recover certain costs of providing stand-alone DSL service. Tellingly, the “supplier surcharge” was approximately 96% the size of the previously charged universal service recovery surcharge.³⁴ Similarly, BellSouth reportedly carried out a similar plan, promptly resurrecting its universal service recovery surcharge in the guise of a \$2.97 “regulatory cost recovery fee” and recovering it from more than three million DSL subscribers.³⁵ The Commission recently responded to Verizon’s announcement by sending a letter of inquiry regarding its “supplier surcharge,” which in itself ostensibly caused Verizon and BellSouth to refrain from continuing with their plans.³⁶ Not only do the actions and intentions of these two ILECs demonstrate that the broadband Internet access markets are not as competitive as the Commission supposed in its *Wireline Broadband Order* a year ago,³⁷ but the response of the Commission indirectly highlights the need in the context of the broadband services at issue in these proceedings to

³⁴ See R. Mark: “FCC on Verizon’s DSL Fee Case” (August 29, 2006) found on the web at <http://www.internetnews.com/bus-news/article.php/3629111> (“Verizon’s DSL Fee”).

³⁵ See J. Dunbar: “BellSouth to eliminate DSL service fee”(August 27, 2006) found on the web at <http://www.physorg.com/news75894608.html>

³⁶ See Verizon’s *DSL Fee*; W. Wood: “Verizon Drops Surcharge Plans For High-Speed Internet Customers,” August 30, 2006, http://online.wsj.com/article_print/SB115696343739749692.html.

³⁷ As noted in the Joint Commenters initial comments, the ILEC Petitioners’ reliance on the *Wireline Broadband Order* as support for their broader, and fundamentally different, forbearance relief request is misplaced. Comments of Joint Commenters at 24-26. Nonetheless, if the competition the ILECs experience from cable operators and intermodal providers in the marketplaces for broadband Internet access is not sufficient to ensure just and reasonable pricing, it is even less able to do so in the broader broadband services markets, where there is no intermodal or facilities-based competition.

continue to apply Title II protections against unjust and unreasonable and discriminatory prices, terms, and conditions. If the ILEC Petitioners and Verizon (and their two supporters) have their way, the Commission's hands would be tied in the face of broadband price increases and other actions demonstrating that, as is the case, existing competition is not sufficient to protect consumers from unjust and unreasonable prices and terms. In other words, competitive conditions are inadequate to assume the job currently performed by the Commission pursuant to its Title II regulatory authority.

The initial comments also make clear that the ILEC Petitioners have no real need for forbearance relief. While the ILEC Petitioners claim that they need relief in order to respond to moves by competitors, the fact is that they have considerable, and sufficient, flexibility in the form of individual case-based pricing.³⁸ So, not only do the ILEC Petitioners have the means to compete effectively, this means that, without regulation, monopoly prices are more likely to be charged wherever competitors cannot provide facilities-based service. Although there is no real evidence in the record regarding the ILEC Petitioners' inability to respond to their competitors (where they have them), if there were any such restraints in place, at most it would argue for some streamlining of current tariff requirements through a rulemaking.³⁹

³⁸ See Comments of Alpheus *et al.* at 12-13.

³⁹ Cincinnati Bell contends, without elaboration, that the tariffing requirements affect its ability to respond to competitors. Comments of Cincinnati Bell at 7. Notably, that ILEC, the ILEC Petitioners, and Verizon all fail to allege specifically that the requirements of Sections 201, 202, or 208 in any way affect their ability to compete.

IV. THE COMMENTS SUPPORT THE JOINT COMMENTERS' CONCLUSIONS THAT THE COMMISSION MAY (AND SHOULD) STILL DENY THE VERIZON PETITION

Several commenting companies, like the Joint Petitioners, call for the Commission finally to rule on the merits of the Verizon Petition simultaneously with the requests made by the ILEC Petitioners – and deny them all.⁴⁰ Not only would a ruling on Verizon's Petition remove any potential discrimination that the ILEC Petitioners allege exists because of the "deemed granted" of Verizon's forbearance request, it would ensure that the substantive criteria and public interest concerns of Congress are properly addressed for the admittedly largest provider of broadband services in the country. The Commission retains the authority to review, and deny, Verizon's petition at this time.⁴¹ Indeed, Qwest, a recipient of Title II forbearance itself in one of its markets for mass market services, has conceded the Commission may reapply forbearance regulations.⁴²

⁴⁰ Comments of Alpheus *et al.* at 8.

⁴¹ Comments of Joint Commenters at 12-15. The call on "both sides of the aisle" for the Commission, directly or indirectly, to clarify the scope of Verizon's "deemed granted" status is itself predicated on the notion that the Commission has such authority. *See* Comments of OPASTCO at 3 (the Commission needs to explain the scope of any Verizon grant); BellSouth Petition at 3-4; Embarq Petition at 5; Comments of Comptel at 3-4; Comments of Sprint at 22.

⁴² *See* Comments of Alpheus *et al.* at 9, n.16 (citing Brief of Qwest, Inc., *Qwest v. FCC*, DC Cir. 05-1450, at 24 n. 17 (Aug. 7, 2006)).

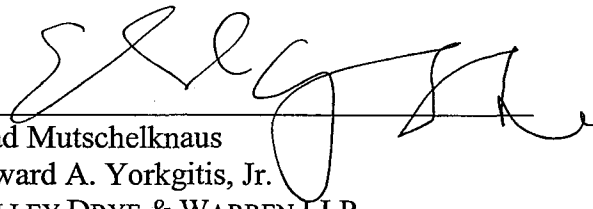
V. CONCLUSION

For the foregoing reasons and those set forth in the Joint Commenters' initial comments, the Commission should deny each of the ILEC Petitions in its entirety. The Commission should also proceed to take long overdue action on the Verizon Petition, and deny it as well.

Respectfully submitted,

**BROADVIEW NETWORKS
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CTC COMMUNICATIONS, INC.
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August 31, 2006

CERTIFICATE OF SERVICE

I hereby certify that on this 31st day of August 2006, a true and correct copy of the foregoing Reply Comments was delivered by first-class mail, postage prepaid, unless otherwise specified, upon the following:

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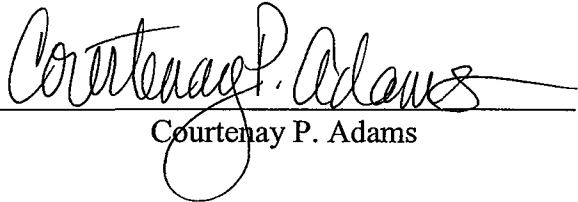
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